



JUDICIAL REFORM INDEX

FOR

ALBANIA



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December 2001





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TABLE OF CONTENTS

Introduction.....	i
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Albania Background

Legal Context.....	1
History of the Judiciary	1
Structure of the Courts	1
Conditions of Judicial Service	2
<i>Qualifications</i>	2
<i>Appointment and Tenure</i>	2
<i>Training</i>	3
Assessment Team.....	3

Albania Judicial Reform Index (JRI) 2001 Analysis

Table of Factor Correlations.....	4
-----------------------------------	---

I. Quality, Education, and Diversity	5
1. Judicial Qualification and Preparation.....	5
2. Selection/Appointment Process.....	6
3. Continuing Legal Education.....	7
4. Minority and Gender Representation	8
II. Judicial Powers	9
5. Judicial Review of Legislation.....	9
6. Judicial Oversight of Administrative Practice	10
7. Judicial Jurisdiction over Civil Liberties	10
8. System of Appellate Review.....	11
9. Contempt/Subpoena/Enforcement	12
III. Financial Resources.....	13
10. Budgetary Input	13
11. Adequacy of Judicial Salaries.....	14
12. Judicial Buildings	15
13. Judicial Security.....	15
IV. Structural Safeguards.....	16
14. Guaranteed Tenure	16
15. Objective Judicial Advancement Criteria.....	17
16. Judicial Immunity for Official Actions.....	18
17. Removal and Discipline of Judges	18
18. Case Assignment	20
19. Judicial Associations	20

V.	Accountability and Transparency	21
20.	Judicial Decisions and Improper Influence	21
21.	Code of Ethics	22
22.	Judicial Conduct Complaint Process	23
23.	Public and Media Access to Proceedings	23
24.	Publication of Judicial Decisions	24
25.	Maintenance of Trial Records.....	25
VI.	Efficiency	26
26.	Court Support Staff.....	26
27.	Judicial Positions	26
28.	Case Filing and Tracking Systems.....	27
29.	Computers and Office Equipment	28
30.	Distribution and Indexing of Current Law	28

Introduction

The Judicial Reform Index (JRI) is a tool developed by the American Bar Association's Central and East European Law Initiative (ABA/CEELI). Its purpose is to assess a cross-section of factors important to judicial reform in emerging democracies. In an era when legal and judicial reform efforts are receiving more attention than in the past, the JRI is an appropriate and important assessment mechanism. The JRI will enable ABA/CEELI, its funders, and the emerging democracies themselves, to better target judicial reform programs and monitor progress towards establishing accountable, effective, independent judiciaries.

ABA/CEELI embarked on this project with the understanding that there is not uniform agreement on all the particulars that are involved in judicial reform. In particular, ABA/CEELI acknowledges that there are differences in legal cultures that may make certain issues more or less relevant in a particular context. However, after a decade of working in the field on this issue, ABA/CEELI has concluded that each of the thirty factors examined herein may have a significant impact on the judicial reform process. Thus, an examination of these factors creates a basis upon which to structure technical assistance programming and assess important elements of the reform process.

The technical nature of the JRI distinguishes this type of assessment tool from other independent assessments of a similar nature, such as the U.S. State Department's *Human Rights Report* and Freedom House's *Nations in Transit*. This assessment will *not* provide narrative commentary on the overall status of the judiciary in a country. Rather, the assessment will identify specific conditions, legal provisions, and mechanisms that are present in a country's judicial system and assess how well these correlate to specific reform criteria at the time of the assessment. In addition, this analytic process will not be a scientific statistical survey. The JRI is first and foremost a legal inquiry that draws upon a diverse pool of information that describes a country's legal system.

Assessing Reform Efforts

Assessing a country's progress towards judicial reform is fraught with challenges. No single criteria may serve as a talisman, and many commonly considered factors are difficult to quantify. For example, the key concept of an independent judiciary inherently tends towards the qualitative and cannot be measured simply by counting the number of judges or courtrooms in a country. It is difficult to find and interpret "evidence of impartiality, insularity, and the scope of a judiciary's authority as an institution." Larkins, *Judicial Independence and Democratization: A Theoretical and Conceptual Analysis*, 44 AM. J. COMP. L. 611 (1996). Larkins cites the following faults in prior efforts to measure judicial independence:

- (1) the reliance on formal indicators of judicial independence which do not match reality, (2) the dearth of appropriate information on the courts which is common to comparative judicial studies, (3) the difficulties inherent in interpreting the significance of judicial outcomes, or (4) the arbitrary nature of assigning a numerical score to some attributes of judicial independence.

Id. at 615.

Larkins goes on to specifically criticize a 1975 study by David S. Clark, which sought to numerically measure the autonomy of Latin American Supreme Courts. In developing his "judicial effectiveness score," Clark included such indicators as tenure guarantees, method of removal, method of appointment, and salary guarantees. Clark, *Judicial Protection of the Constitution in Latin America*, 2 HASTINGS CONST. L. Q. 405 – 442 (1975).



The problem, though, is that these formal indicators of judicial independence often did not conform to reality. For example, although Argentine justices had tenure guarantees, the Supreme Court had already been purged at least five times since the 1940s. By including these factors, Clark overstated . . . the independence of some countries' courts, placing such dependent courts as Brazil's ahead of Costa Rica's, the country that is almost universally seen as having the most independent judicial branch in Latin America.

Larkins, *supra*, at 615. Reliance on subjective rather than objective criteria may be equally susceptible to criticism. *E.g.*, Larkins, *supra*, at 618 (critiquing methodology which consisted of polling 84 social scientists regarding Latin American courts as little more than hearsay). Moreover, one cannot necessarily obtain reliable information by interviewing judges: "[j]udges are not likely to admit that they came to a certain conclusion because they were pressured by a certain actor; instead, they are apt to hide their lack of autonomy." Larkins, *supra*, at 616.

ABA/CEELI's Methodology

ABA/CEELI sought to address these issues and criticisms by including both subjective and objective criteria and by basing the criteria examined on some fundamental international norms, such as those set out in the *United Nations Basic Principles on the Independence of the Judiciary*; *Council of Europe Recommendation R(94)12 "On the Independence, Efficiency, and Role of Judges"*; and *Council of Europe, the European Charter on the Statute for Judges*. Reference was also made to a Concept Paper on Judicial Independence prepared by ABA/CEELI and criteria used by the International Association of Judges in evaluating membership applications.

Drawing on these norms, ABA/CEELI compiled a series of 30 statements setting forth factors that facilitate the development of an accountable, effective, independent judiciary. To assist assessors in their evaluation of these factors, ABA/CEELI developed corresponding commentary citing the basis for the statement and discussing its importance. A particular effort was made to avoid giving higher regard to American, as opposed to European concepts, of judicial structure and function. Thus, certain factors are included that an American or European judge may find somewhat unfamiliar, and it should be understood that the intention was to capture the best that leading judicial cultures have to offer. Furthermore, ABA/CEELI reviewed each factor in light of its decade of experience and concluded that each factor may be influential in the judicial reform process. Consequently, even if some factors are not universally-accepted as basic elements, ABA/CEELI determined their evaluation to be programmatically useful and justified. The categories incorporated address the quality, education, and diversity of judges; jurisdiction and judicial powers; financial and structural safeguards; accountability and transparency; and issues affecting the efficiency of the judiciary.

The question of whether to employ a "scoring" mechanism was one of the most difficult and controversial aspects of this project, and ABA/CEELI debated internally whether it should include one at all. During the 1999-2001 time period, ABA/CEELI tested various scoring mechanisms. Following a spirited discussion with members of the ABA/CEELI's Executive and Advisory Boards, as well as outside experts, ABA/CEELI decided to forego any attempt to provide an overall scoring of a country's reform progress to make absolutely clear that the JRI is not intended to be a complete assessment of a judicial system.

Despite this general conclusion, ABA/CEELI did conclude that qualitative evaluations could be made as to specific factors. Accordingly, each factor, or statement, is allocated one of three values: *positive, neutral, or negative*. These values only reflect the relationship of that statement to that country's judicial system. Where the statement strongly corresponds to the reality in a given country, the country is to be given a score of "positive" for that statement. However, if the statement is not at all representative of the conditions in that country, it is given a "negative." If



the conditions within the country correspond in some ways but not in others, it will be given a “neutral.” Cf. Cohen, *The Chinese Communist Party and ‘Judicial Independence’: 1949-59*, 82 HARV. L. REV. 972 (1969), (suggesting that the degree of judicial independence exists on a continuum from “a completely unfettered judiciary to one that is completely subservient”). Again, as noted above, ABA/CEELI has decided not to provide a cumulative or overall score because, consistent with Larkin’s criticisms, ABA/CEELI determined that such an attempt at overall scoring would be counterproductive.

Instead, the results of the 30 separate evaluations are collected in a standardized format in each JRI country assessment. Following each factor, there is the assessed correlation and a description of the basis for this conclusion. In addition, a more in-depth analysis is included, detailing the various issues involved. Cataloguing the data in this way facilitates its incorporation into a database, and it permits end users to easily compare and contrast performance of different countries in specific areas and—as JRIs are updated—within a given country over time.

Social scientists could argue that some of the criteria would best be ascertained through public opinion polls or through more extensive interviews of lawyers and court personnel. Sensitive to the potentially prohibitive cost and time constraints involved, ABA/CEELI decided to structure these issues so that they could be effectively answered by limited questioning of a cross-section of judges, lawyers, journalists, and outside observers with detailed knowledge of the judicial system. Overall, the JRI is intended to be rapidly implemented by one or more legal specialists who are generally familiar with the country and region and who gather the objective information and conduct the interviews necessary to reach an assessment of each of the factors.

One of the purposes of the assessment is to help ABA/CEELI — and its funders and collegial organizations — determine the efficacy of their judicial reform programs and help target future assistance. Many of the issues raised (such as judicial salaries and improper outside influences), of course, cannot necessarily be directly and effectively addressed by outside providers of technical assistance. ABA/CEELI also recognizes that those areas of judicial reform that can be addressed by outsiders, such as judicial training, may not be the most important. Having the most exquisitely educated cadre of judges in the world is no guarantee of an accountable, effective, or independent judiciary; and yet, every judiciary does need to be well-trained. Moreover, the nexus between outside assistance and the country’s judiciary may be tenuous at best: building a truly competent judiciary requires real political will and dedication on the part of the reforming country. Nevertheless, it is important to examine focal areas with criteria that tend toward the quantifiable, so that progressive elements may better focus reform efforts. ABA/CEELI offers this product as a constructive step in this direction and welcomes constructive feedback.

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Albania Background

Legal Context

Albania is a parliamentary republic, divided into twelve regions (*qarqe*), which are further subdivided into thirty-six districts (*rrethe*). Following its change to pluralism in 1991, the country operated on the basis of an interim constitutional document, passed in sections by a two-thirds majority of Parliament. In November 1998, following a popular referendum, the Interim Constitutional Provisions were replaced by a new Albanian Constitution.

History of the Judiciary

During the communist era, Albania was an extreme, Stalinist regime under heavy totalitarian rule. Its judiciary was subjugated to the will of the President of the Republic and other executive authorities. Telephone justice was common, with courts often taking instructions from executive branch authorities, party leaders, and prosecutors. With the change to pluralism in 1991 and the passage of the Interim Constitutional Provisions, Albania established in name, if not in fact, an independent judiciary. As part of the transition, many communist era judges were purged from the judiciary and replaced by those who had attended only a six-month training course in the law. Through 1996, remnants of the old totalitarian mentality persisted, and the executive branch often imposed upon the country's courts. Thereafter, courts gained greater independence; and in 1998, the principle of separation of powers was further reinforced with the passage of the Constitution.

Structure of the Courts

Albania has a Constitutional Court, as well as a three-tiered regular court system made up of courts of first instance, courts of appeals, and the High Court. Military courts of first instance and a military court of appeals operate within the regular court system.

The **Constitutional Court** has jurisdiction over cases involving the compatibility of the law with the Constitution or with international agreements; compatibility of international agreements with the Constitution prior to their ratification; compatibility of normative acts of the central and local government bodies with the Constitution and international agreements; conflicts of competencies between the powers of government and other political organizations; and dismissal from duty of the President of the Republic. The Constitutional Court also has jurisdiction over issues related to the elections of, and incompatibility in exercising the functions of, the President of the Republic and the deputies; the constitutionality of referenda and verification of their results; and final adjudication of individuals' complaints regarding the violation of their constitutional rights to due process of law. The Constitutional Court is composed of nine members, appointed by the President of the Republic with the consent of the Assembly. The decisions of the Constitutional Court are binding on other courts and are not subject to review by any other body.

The **High Court** is the highest appellate body in Albania. It has appellate jurisdiction over decisions of the courts of appeals and has original jurisdiction to adjudicate criminal charges against the President of the Republic, the Prime Minister, members of the Council of Ministers, deputies, judges of the High Court, and judges of the Constitutional Court. The High Court, sitting in joint panels, may issue opinions to unify or change judicial practice. The High Court is composed of seventeen judges, appointed by the President of the Republic with the approval of the Assembly.

Courts of Appeals sit in six different regions of the country and adjudicate appeals taken from the courts of first instance. These courts sit in three judge panels.



Courts of First Instance—composed of courts of judicial districts, courts of felonies and military courts of first instance—are organized and function in thirty-six judicial districts throughout the country.

Conditions of Service

Qualifications

To be appointed as a judge in the courts of first instance or courts of appeal, one must possess full legal capacity, hold a law degree, have no criminal record, have a “good reputation,” and be at least twenty-five years old. In addition, one must have either: (1) graduated from the Albanian School for Magistrates—a three year training program for judges and prosecutors; (2) worked for more than three years as a pedagogue at the Law Faculty or the Magistrates School, as a Member of Parliament, as a legal advisor to the Assembly, as a legal advisor to the President of the Republic or the Council of Ministers, or as a specialist with the Ministry of Justice, the High Court or the General Prosecutor’s Office; (3) graduated from a qualifying long-term post-graduate legal training program abroad; or (4) worked for at least five years as a judge, assistant judge, public prosecutor, advocate, or notary and pass a professional competency examination within six months of the date of appointment. In practice, the vast majority of judges now being appointed are graduates of the Magistrates School.

Judges of the courts of appeal are appointed by the President of the Republic, upon the proposal of the High Council of Justice after they have worked for not less than five years as judges in the courts of first instance and have demonstrated “high ethical, moral and professional standards in the exercise of their duties.”

The President of the Republic, with the consent of the Assembly, appoints the judges of the Constitutional Court and High Court. Appointments to the Constitutional Court are made from among highly qualified legal professionals with at least fifteen years of experience in the legal profession. High Court judges are appointed from among highly qualified legal professionals with at least fifteen years of work experience, or from among judges with at least ten years on the bench.

Judges who attend the Magistrates School complete a three-year program involving one year of classroom work, one year of supervised training in the courts, and one year of intensive professional practice in the courts under the supervision of a judge. Those who are appointed without attending the Magistrates School are not required to take any specific course (other than those required for a law degree) before taking the bench, nor is it necessary that they have practiced in the courts.

While the legal criteria to become a judge is much improved under current legislation, many judges appointed from 1992 through as late as 1996 had completed only a six-month, crash course in the law. Other judges were appointed after completing a questionable correspondence program in law involving exams in all of the required law school courses, but no regular course attendance. The six-month courses are no longer given, and the correspondence program has stopped accepting new students. (Correspondence students that matriculated in 1997 or earlier have several years to complete their program). In 1999, in order to address the perception that a large segment of the judiciary lacked sufficient legal training, all sitting judges of the first instance were given an examination designed to test their professional competency. Those who refused to take the exam, or who failed (if any), were removed from the bench.

Appointment and Tenure

Judges of the Constitutional Court and High Court are appointed by the President of the Republic

with the consent of the Assembly. They are appointed for nine-year terms and do not have the right to be re-appointed. Their term of office ends prematurely if they are convicted of a crime, do not appear for duty for more than six months, reach the mandatory retirement age (65 for the High Court and 70 for the Constitutional Court), resign, or are declared incompetent by a court. In any of these cases, the end of the term is declared by the court on which the judge sits.

Judges of the courts of first instance and courts of appeal are appointed by the President of the Republic, upon the proposal of the High Council of Justice. They continue in their function until they resign, are removed for cause, or reach the age of sixty-five.

Training

University-level legal education in Albania was characterized by respondents as substandard. Many praised the Magistrates School's training of new judges and indicated that those who complete the Magistrates School dramatically increase their legal reasoning and writing skills. At the same time, many judges who joined the bench earlier have greater experience and practical knowledge than the new Magistrates School judges.

Judges who have fewer than five years of work experience and who have not finished the Magistrates School are required by law to participate in continuing training activities. Continuing training is optional for all other judges. To date, the Magistrates School has focused the bulk of its resources on the initial training of aspiring judges and prosecutors and has not been able to fulfill its mandate for continuing training. Moreover, the Magistrates School lacks funding for the ambitious program of continuing training it has planned for the coming year. Thus, continuing training of judges to date has been sporadic and largely donor driven.

Assessment Team

The Albania JRI 2001 Analysis assessment team was led by Robert Pulver and benefited in substantial part from the efforts of Aida Cenaj, Denisa Fekollari, Roland Gjoni, Erion Hajderi, Stephen Kelley, Alketa Prifti, Gina Schaar, and Rudina Shkurti. The conclusions and analyses are based on interviews that were conducted in Albania during the winter of 2001 and documents reviewed during that period and beyond. ABA-CEELI Washington staff members Scott Carlson, Wendy Betts, Sarah Churchill, and Sokol Shtylla served as editors. Records of relevant authorities and individuals interviewed are on file with ABA/CEELI.



Albania JRI 2001 Analysis

The Albania JRI 2001 Analysis reveals a judicial system still struggling in a post-communist transitional period. Great strides have been made over the past several years including: development of the legal framework, National Judicial Conference, and Magistrates School; and improvement of court infrastructure, judicial salaries, and understanding of the role of an independent judiciary. However, significant steps are still needed in all areas. Moreover, the problem of judicial corruption remains a substantial threat to the functioning of the judiciary in Albania. Thus, despite many dramatic improvements over the past several years, the JRI analysis of reform factors reveals a substantial range of issues requiring further attention. While the reform factor correlations may serve to give a sense of the relative gravity of certain issues, ABA/CEELI would underscore that these factor correlations possess their greatest utility when viewed in conjunction with the underlying analysis. In this regard, ABA/CEELI invites comments and information that would enable it to develop better or more detailed responses in future JRI assessments. ABA/CEELI views the JRI assessment process to be part of an ongoing effort to monitor and evaluate reform activities.

Table of Factor Correlations

I. Quality, Education, and Diversity		
Factor 1	Judicial Qualification and Preparation	Neutral
Factor 2	Selection/Appointment Process	Positive
Factor 3	Continuing Legal Education	Negative
Factor 4	Minority and Gender Representation	Neutral
II. Judicial Powers		
Factor 5	Judicial Review of Legislation	Positive
Factor 6	Judicial Oversight of Administrative Practice	Neutral
Factor 7	Judicial Jurisdiction over Civil Liberties	Positive
Factor 8	System of Appellate Review	Positive
Factor 9	Contempt/Subpoena/Enforcement	Negative
III. Financial Resources		
Factor 10	Budgetary Input	Positive
Factor 11	Adequacy of Judicial Salaries	Negative
Factor 12	Judicial Buildings	Neutral
Factor 13	Judicial Security	Negative
IV. Structural Safeguards		
Factor 14	Guaranteed Tenure	Positive
Factor 15	Objective Judicial Advancement Criteria	Negative
Factor 16	Judicial Immunity for Official Actions	Positive
Factor 17	Removal and Discipline of Judges	Neutral
Factor 18	Case Assignment	Neutral
Factor 19	Judicial Associations	Neutral
V. Accountability and Transparency		
Factor 20	Judicial Decisions and Improper Influence	Negative
Factor 21	Code of Ethics	Negative
Factor 22	Judicial Conduct Complaint Process	Neutral
Factor 23	Public and Media Access to Proceedings	Negative
Factor 24	Publication of Judicial Decisions	Negative
Factor 25	Maintenance of Trial Records	Negative
VI. Efficiency		
Factor 26	Court Support Staff	Negative
Factor 27	Judicial Positions	Neutral
Factor 28	Case Filing and Tracking Systems	Neutral
Factor 29	Computers and Office Equipment	Negative
Factor 30	Distribution and Indexing of Current Law	Neutral

I. Quality, Education, and Diversity

Factor 1: Judicial Qualification and Preparation

Judges have formal university-level legal training and have practiced before tribunals or, before taking the bench, are required (without cost to the judges) to take relevant courses concerning basic substantive and procedural areas of the law, the role of the judge in society, and cultural sensitivity.

Conclusion	Correlation: Neutral
Formal university-level legal education is required of all judicial candidates, but the education provided at Albania's law schools is regarded as substandard. The Magistrates School's three-year training program, completed by most, but not all, of the new judges now being appointed, provides the necessary pre-appointment academic training and court-room experience.	

Analysis/Background:

All judges must have formal university-level legal training before taking the bench. Three main problems have been identified, however, with regard to that training. First, many judges were previously appointed to the bench after only a six-month quick preparation course in the law. To address this problem, in 1999, all judges of the first instance courts with fewer than ten years of experience were subjected to a one-time competence examination designed to weed out any judges with insufficient legal training. While few if any failed, only those that agreed to take the exam remained on the bench. Second, many judges (and other legal professionals) completed law school by correspondence—a program that has been seen by many as failing to guarantee an adequate legal education. This correspondence program will come to a halt, albeit gradually. No new correspondence students have been admitted since 1997, but those previously enrolled will be permitted to complete the program over the next several years. Third, many respondents indicated that even those who attend Albania's law schools as regular full-time students receive substandard education. While new efforts are underway to address this problem, reform efforts at Albania's law faculties have been slow.

The vast majority of new judges appointed after 1999 completed the three-year training program at the Albanian School for Magistrates. The Magistrates School curriculum was seen by many respondents as making up for inadequacies in the university-level legal education. During the first year of the program, aspiring judges (and prosecutors) complete academic course work in basic substantive and procedural areas of the law and judicial ethics. While the role of the judge in society and cultural sensitivity are not formal topics at either the law schools or at the Magistrates School, these topics are often touched upon in some form in the other courses at the Magistrates School. The second and third years of the Magistrates School training program provide aspiring judges with practical, hands-on training in court practice under the direction of a supervising judge.

Thus, while most new judges now receive adequate preparation through the Magistrates School program, most judges who were appointed to the bench before the graduation of the first class of students from the Magistrates School in 2000 did not have the benefit of such training. Furthermore, apart from mandatory continuing training that has yet to fully begin, there is no special training program for judges who do not attend the Magistrates School, and there is no requirement that they have practiced before tribunals prior to taking the bench.

Factor 2: Selection/Appointment Process

Judges are appointed based on objective criteria, such as passage of an exam, performance in law school, other training, experience, professionalism, and reputation in the legal community. While political elements may be involved, the overall system should foster the selection of independent, impartial judges.

Conclusion	Correlation: Positive
The appointment of judges, particularly those who pass through the Magistrates School three-year program, is based on objective criteria. While there is a possibility of undue political or personal influence in some appointments, the system currently operates to provide a check on appointments through either the High Council of Justice or the Assembly.	

Analysis/Background:

Judges of the courts of first instance and courts of appeal are appointed by the President of the Republic, upon the proposal of the High Council of Justice. See CONSTITUTION OF THE REPUBLIC OF ALBANIA art. 136.4, Law No. 8417, 28 FLET. ZYRT. 1073-1112 (1998) (signed into force on November 28, 1998) [hereinafter CONSTITUTION]. The law provides that appointments be made on the basis of objective criteria including “university performance, duration of practice as a lawyer, professional performance, post-graduate training, as well as any other objective data that show the superiority of one applicant over other candidates.” LAW ON THE ORGANIZATION OF THE JUDICIAL POWER IN THE REPUBLIC OF ALBANIA art. 22, Law No. 8436, 33 FLET. ZYRT. 1265-75 (1998), *as amended by* Law No. 8546, 31 FLET. ZYRT. 1210-12 (1999) and Law No. 8656, 24 FLET. ZYRT. 1256-58 (2002) [hereinafter LAW ON THE ORGANIZATION OF JUSTICE]. To be appointed as a judge in the courts of first instance or courts of appeal, one must possess full legal capacity, hold a law degree, have no criminal record, have a “good reputation,” and be at least twenty-five years old. In addition, one must have either: (1) graduated from the Albanian School for Magistrates—a three year training program for judges and prosecutors; (2) worked for more than three years as a pedagogue at the Law Faculty or the Magistrates School, as a Member of Parliament, as a legal advisor to the Assembly, as a legal advisor to the President of the Republic or the Council of Ministers, or as a specialist with the Ministry of Justice, the High Court or the General Prosecutor’s Office; (3) graduated from a qualifying long-term post-graduate legal training program abroad; or (4) worked for at least five years as a judge, assistant judge, public prosecutor, advocate, or notary and pass a professional competency examination within six months of the date of appointment. See LAW ON THE ORGANIZATION OF JUSTICE arts. 19, 20.

Those judges following the Magistrates School track to the bench must first pass a blind-graded written test and an oral examination for admittance to the School. Those who are admitted and successfully complete the School’s three-year training program, including a professional internship, are recommended for appointment to the bench. See LAW ON THE MAGISTRATES SCHOOL OF THE REPUBLIC OF ALBANIA arts. 16-20, Law No. 8136, 21 FLET. ZYRT. 755-62 (1996) [hereinafter LAW ON THE MAGISTRATES SCHOOL]. (Article 20, passed before the new Constitution, erroneously states that the High Council, rather than the President, has the appointment power.) Appointments are based on evaluations by the academic council of the School. *Id.* In practice, the appointment of Magistrates School graduates to the bench has been almost automatic, with the only open question being the location of the court on which they will serve. The vast majority of judges now being appointed are graduates of the Magistrates School

Under the new Law on the High Council of Justice (effective May 6, 2002), judicial candidates will also be subjected to professional testing by a special commission of the High Council of Justice. The results of the testing, as well as the other legal criteria for appointment, will be taken into

account in the appointment process. See LAW ON THE ORGANIZATION AND FUNCTIONING OF THE HIGH COUNCIL OF JUSTICE arts. 29-30, Law No. 8811 (approved by the Assembly May 17, 2001, returned by the President for review on 14/06/2001 by the Decree No. 3061, and passed again by Parliament on April 2, 2002 without change) [hereinafter NEW LAW ON THE HIGH COUNCIL OF JUSTICE].

The High Council of Justice is composed of “the President of the Republic, the Chairperson of the High Court, the Minister of Justice, three members elected by the Assembly, and nine judges of all levels who are elected by the National Judicial Conference.” CONSTITUTION art. 147.1. The President of the Republic serves as its Chairperson. *Id.* at art. 147.2. The President thus plays two roles in the appointment of lower level judges—he chairs the council that is charged with proposing judicial appointments, and he makes the final appointment. At least one respondent felt that the dual role of the President on the High Council leaves open the possibility for abuse by future presidents. While all council members have equal votes, the historical tendency in Albania has been for members of a body to defer overly to its chairperson. Giving the chairperson the final appointment power might further reinforce this tendency. Although respondents were quick to point out that they perceive no problem under current presidential leadership, future JRI assessments should continue to pay close attention to this issue.

Judges of the Constitutional Court and High Court are appointed by the President of the Republic with the consent of the Assembly. CONSTITUTION arts. 125.1, 136.1. While one respondent complained of isolated appointments made on political grounds and cronyism, a check on high-level appointments exists in the Assembly.

Factor 3: Continuing Legal Education

Judges must undergo, on a regular basis and without cost to them, professionally prepared continuing legal education courses, the subject matters of which are generally determined by the judges themselves and which inform them of changes and developments in the law.

Conclusion	Correlation: Negative
Continuing legal education is mandatory only for a portion of Albania's judges. Moreover, continuing judicial training to date has been sporadic, and the lack of a comprehensive program for continuing judicial training detracts from the professionalism of judges.	

Analysis/Background:

Legislation in effect since 1996 charges the Magistrates School with providing continuing training for judges with fewer than five years on the bench who have not graduated from the Magistrates School. The continuing training is mandatory for these judges, but is optional for all others. See LAW ON THE MAGISTRATES SCHOOL arts. 23, 24. In fact, the Magistrates School has focused primarily on the initial training of aspiring judges and prosecutors and has left continuing education as a second priority. While free for the judges, continuing judicial training programs presented thus far have been *ad hoc* and largely donor driven. One respondent pointed to the desperate need for training of judges and prosecutors on major new laws as they are passed, including, for example, recent legislation introducing new criminal offenses. While the Magistrates School has developed a fairly comprehensive curriculum of judicial training for year 2002 based upon input from judges and others, the School's human and financial resources are not sufficient to implement the program. Continuing training is sorely needed, particularly given changing legislation and the initial training deficiencies discussed above under Factor 1.



Factor 4: Minority and Gender Representation

Ethnic and religious minorities, as well as both genders, are represented amongst the pool of nominees and in the judiciary generally.

Conclusion	Correlation: Neutral
Albania does not maintain statistics on the ethnic and religious composition of the judiciary. Members of the various religious groups, both genders, and the Greek minority are found among the pool of nominees and in the judiciary generally, but there are currently no Roma judges. A high percentage of women sit on the lower courts, but few women serve as court presidents.	

Analysis/Background:

According to older statistics, approximately 95% of the population is ethnic Albanian, 3-4% ethnic Greek, with the remainder made up primarily of Macedonians, Roma and Vlachs. Albania has been characterized as having a “generally positive record on the treatment of minorities,” and has thus far avoided the type of ethnic and religious tensions that have plagued other Balkan nations. See U.S. DEPARTMENT OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES – 2000, ALBANIA (2001) (“Relations among the various religious groups are generally amicable, and tolerance is widespread”); and U.S. DEPARTMENT OF STATE, BACKGROUND NOTE: ALBANIA (1999).

The lack of statistics regarding the ethnic and religious composition of the judiciary makes it extremely difficult to ascertain the extent to which various ethnic groups in Albania are represented on the judiciary or in the pool of applicants/nominees. Nevertheless, respondents were quick to state that they perceive no significant barriers to minority participation in the judiciary. Moreover, they were aware of no examples of ethnic or religious leaders making specific complaints about a lack of participation on the bench. Respondents said that in areas in southern Albania in which there is a significant Greek minority, ethnic Greeks fill a substantial number of the judicial seats. For example, it was reported that the Saranda District Court has a higher percentage of judges of Greek heritage than reflected in the overall population of the region. One of seventeen judicial positions on the High Court is filled by a judge of Greek background. As for ethnic and religious representation in the pool of nominees, the competitive entrance examination for the Magistrates School is open to all who meet the basic criteria of having graduated from law school, but statistics are not kept on the background of the applicants.

It does not appear that there is a single Roma judge in Albania. (Very few Roma have attended law school; and there is currently only one Roma prosecutor.) Respondents believed, however, that if more Roma were to participate in the education system and elect to enter law school, there would be no artificial barrier to their participation in the judiciary. Respondents lacked information regarding the participation of judges of other ethnic backgrounds.

Although records are not kept of the religious affiliation of judges, respondents felt that judges of all religious affiliations were in the pool of applicants and freely participated in the judiciary.

With respect to gender, it appears that Albania is doing well when it comes to the *overall* representation of both genders on the judiciary—a reasonably well-balanced number of men and women now graduate from law school, attend the Magistrates School, and serve as judges. At higher levels of the judiciary, however, men still significantly outnumber women. For example, while women fill five of seventeen positions on the High Court, only one of nine judges on the Constitutional Court is a woman. Only five of thirty-eight court presidents throughout the system are female.

II. Judicial Powers

Factor 5: Judicial Review of Legislation

A judicial organ has the power to determine the ultimate constitutionality of legislation and official acts, and such decisions are enforced.

Conclusion	Correlation: Positive
Judicial organs have the power to determine the constitutionality of laws and official acts. While enforcement of decisions has generally been a problem in Albania, no recent problems were reported regarding the enforcement of decisions of the Constitutional Court.	

Analysis/Background:

The Constitutional Court is the highest constitutional authority and is charged with making the final interpretation of the Constitution. See CONSTITUTION art. 124.1; LAW ON THE ORGANIZATION AND FUNCTIONING OF THE CONSTITUTIONAL COURT OF THE REPUBLIC OF ALBANIA art. 2, Law No. 8577, 4 FLET. ZYRT. 101-22 (2000) [hereinafter LAW ON THE CONSTITUTIONAL COURT]. The Constitutional Court has jurisdiction over cases involving the compatibility of the law with the Constitution or with international agreements; compatibility of international agreements with the Constitution prior to their ratification; compatibility of normative acts of the central and local government bodies with the Constitution and international agreements; conflicts of competencies between the powers of government and other political organizations; and dismissal from duty of the President of the Republic. The Constitutional Court also has jurisdiction over issues related to the elections of, and incompatibility in exercising the functions of, the President of the Republic and the deputies; the constitutionality of referenda and verification of their results; and final adjudication of individuals' complaints for the violation of their constitutional rights to due process of law. The decisions of the Constitutional Court are binding on all other courts and are not subject to review by any other body. CONSTITUTION arts. 124-134. If a judge of the regular court system determines that a law comes into conflict with the Constitution, they are to suspend the proceedings and refer the matter to the Constitutional Court. *Id.* at art. 145.2. Individuals and organizations may present requests to the court for matters within their interests. *Id.* at arts. 134.1, 134.2.

Constitutional issues may also arise within the context of proceedings in the regular court system, but many litigants and judges are reluctant to raise and address constitutional matters. Some lawyers erroneously believe that constitutional issues may be raised only in the Constitutional Court.

While in general there is a problem with the enforcement of court judgments in Albania (see Issue 9 below), this problem does not appear to have significantly affected the Constitutional Court. Respondents were not aware of any instance in which a lack of enforcement authority or political will led to a decision of the Constitutional Court not being enforced.



Factor 6: Judicial Oversight of Administrative Practice

The judiciary has the power to review administrative acts and to compel the government to act where a legal duty to act exists.

Conclusion	Correlation: Neutral
While courts have jurisdiction to review administrative acts, the government is often slow to implement court decisions, and citizens do not make full use of their administrative and judicial remedies.	

Analysis/Background:

The courts have jurisdiction to review administrative acts, and to annul or declare such acts invalid. See THE CODE OF CIVIL PROCEDURE OF THE REPUBLIC OF ALBANIA art. 331, Law No. 8116, 9-11 FLET. ZYRT. 343-479 1996, *as amended by* Law No. 8491, 20 FLET. ZYRT. 621-22 (1999), *and as amended by other legislation* [hereinafter CIVIL PROCEDURE CODE]; THE CODE OF ADMINISTRATIVE PROCEDURES OF THE REPUBLIC OF ALBANIA art. 18(b), Law No. 8485, 19 FLET. ZYRT. 578-616 (1999) [hereinafter ADMINISTRATIVE PROCEDURES CODE]. Administrative law sections have been established in some courts of first instance to handle such cases. See CIVIL PROCEDURE CODE arts. 320-321. The bodies of the public administration can be held liable through administrative processes for money damages to private persons for unlawful administrative acts or omissions. See ADMINISTRATIVE PROCEDURES CODE art. 14. Nevertheless, government bodies are slow or reluctant to implement court decisions in administrative and other cases (See Factor 9 below). Moreover, private citizens are much more likely to try to address administrative matters through informal social channels than through the existing administrative and court procedures. In fact, many citizens are not aware of the formal channels for addressing administrative grievances. This hampers the effectiveness of the formal review of administrative acts and increases the likelihood of corrupt practices within administrative bodies.

Factor 7: Judicial Jurisdiction over Civil Liberties

The judiciary has exclusive, ultimate jurisdiction over all cases concerning civil rights and liberties.

Conclusion	Correlation: Positive
The court system has ultimate jurisdiction over cases involving human rights and fundamental freedoms as set forth in the Constitution and the European Convention for Human Rights.	

Analysis/Background:

Articles 15 through 63 of the Constitution provide all persons in the territory of the Republic of Albania with certain fundamental human rights and make the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) directly applicable. CONSTITUTION arts. 15-63. All organs of public power are bound to respect and promote these enumerated rights and freedoms. *Id.* at art. 15.2. While the Constitutional Court has jurisdiction over enumerated constitutional conflicts (see Factor 5 above) and serves as the final interpreter of the Constitution, see CONSTITUTION arts. 131(a)-(i), 124.1, adjudication of most alleged human rights violations can initially take place in the regular court system. The regular court system

includes the courts of first instance (organized in 36 judicial districts throughout the country), courts of appeals, military courts of first instance and appeals, and the High Court. LAW ON THE ORGANIZATION OF JUSTICE arts. 6-9, 11. The High Court has original jurisdiction to adjudicate criminal charges against the President of the Republic, the Prime Minister, members of the Council of Ministers, deputies, judges of the High Court, and judges of the Constitutional Court. CONSTITUTION art. 141.1. Judges at any level rarely cite the ECHR in their rulings, and few litigants base arguments on the ECHR.

Factor 8: System of Appellate Review

Judicial decisions may be reversed only through the judicial appellate process.

Conclusion	Correlation: Positive
It is well established in law and practice that judicial decisions may only be reversed through the appellate process.	

Analysis/Background:

The Law on the Organization of Justice provides that “judicial power is exercised only by the courts, in conformity with the Constitution and powers given by law.” LAW ON THE ORGANIZATION OF JUSTICE art. 1. Courts of Appeals sit in six different regions of the country and adjudicate appeals taken from the courts of first instance. These courts sit in three judge panels. *Id.* at art. 7. The High Court is the highest appellate body in Albania. It has appellate jurisdiction over decisions of the courts of appeals. *Id.* at art. 13. In addition, the High Court, sitting in joint panels, may issue opinions to unify or change judicial practice. CONSTITUTION art. 141.2. The principle that judicial decisions may only be reversed by higher judicial bodies is well-understood and is currently respected in practice.

Nevertheless, a potential future violation of this principle might arise with respect to cases of judgments rendered against the government. The government has been slow to pay money judgments against it and, on occasion, has failed to implement other judicial orders. Often, governmental officials believe the judgments were the product of corruption or ineffective lawyering by government counsel. (The problem of enforcement of judgments is discussed at greater length under Factor 9 below.) Thus, one respondent believed there to be a review process in which the government would evaluate all of the money judgments against it to determine which have merit, and that it might pay only the judgments it deemed meritorious. While the government is free to attempt to challenge final judgments in court on the basis of new evidence or on the grounds that the judgments were reached on the basis of fraud, it is not free to sit as a final appellate body on cases it has lost in the court system. See CIVIL PROCEDURE CODE art. 494. To do so would be a clear violation of Albanian law and the principles embodied in this JRI factor.



Factor 9: Contempt/Subpoena/ Enforcement

Judges have adequate subpoena, contempt, and/or enforcement powers, which are utilized, and these powers are respected and supported by other branches of government.

Conclusion	Correlation: Negative
The judiciary has subpoena and enforcement powers, but its contempt powers are limited. Available sanctions are often not utilized or are inadequate to curb abuses. Civil judgments, particularly money judgments against the government, often go unsatisfied. In well-known cases, police and/or judicial authorities have been unable or unwilling to compel witness attendance.	

Analysis/Background:

The law provides judges with the power to summons witnesses, documents, and other forms of evidence. See, e.g., CIVIL PROCEDURE CODE arts. 223-224 (acquisition of evidence of third parties and the state). Those who do not comply can be fined, or forced to attend. See, e.g., CRIMINAL PROCEDURE CODE OF THE REPUBLIC OF ALBANIA art. 164, Law No. 7905, 5-7 FLET. ZYRT. 159-295 (1995), *as amended by subsequent legislation* [hereinafter CRIMINAL PROCEDURE CODE] (power to order forced attendance of witness in criminal case); CIVIL PROCEDURE CODE arts. 165-166 (court authority to fine and compel attendance of witness in civil case). For refusing to provide evidence in a criminal matter or for other actions that could constitute a criminal offense, the court can refer the matter to the prosecutor for the commencement of criminal proceedings. See, e.g., CRIMINAL PROCEDURE CODE art. 165.2.

Despite the legal authority of courts in this regard, the non-appearance of witnesses was seen by respondents as a significant problem leading to extraordinary delay in court proceedings. Often through the fault of court staff, logistical difficulties, or the lack of resources, witness summonses are not properly executed. One respondent speculated that in large cases this is sometimes the result of the bribery of court staff. When the summons is not properly executed, courts have little option but to postpone the proceeding and reissue the summons. Even where a summons is properly executed, courts rarely fine witnesses for failing to appear. In well-publicized cases involving public figures, key witnesses have simply refused to attend, and police and judicial authorities have been unable or unwilling to compel their appearance. One respondent complained of the courts' inability to require defendants in a paternity suit to submit to a paternity test. Another respondent indicated that police often do not respect the courts' authority.

Court power to sanction parties and attorneys for bringing frivolous motions is limited. For example, a party who presents an "unjust" request for the recusal of a judge can be held liable for judicial expenses and fined up to 5,000 Albanian lek (\$37).¹ CIVIL PROCEDURE CODE art. 76. Parties are often quite willing to pay this small amount in exchange for the considerable delay that can result from bringing the request.

While courts do not have the full range of contempt powers found in common law systems, courts are able to order persons who disturb the "order and quietness" of the court session to leave the courtroom. CIVIL PROCEDURE CODE art. 178. Participants in civil cases who do not obey the orders of the court may be fined. *Id.* at art. 168.

For a variety of reasons, the enforcement of civil judgments has been extremely problematic. While the situation has improved somewhat over the past few years, many civil judgments still go unenforced. Before a final court order is executed, the judgment creditor must obtain an order of

¹ All conversions are based on a January 2002 exchange rate of 135 lek/\$.

execution. Respondent attorneys said that this introduced the opportunity for additional procedural wrangling that, together with appeals, could delay execution for years. (For legal provisions governing the execution of judgments, see articles 510 through 617 of the Civil Procedure Code).

The issue of execution of judgments against the government is even more problematic. One respondent said that there might currently be thousands of unexecuted money judgments against governmental bodies. While the problem is beginning to be addressed through budgetary and other measures, it appears that the payment of money judgments remains a very low governmental priority. Respondents fell into three camps on the issue, thinking either that past money judgments against the government would not be satisfied at all, would be satisfied only in some of the cases, or were all potentially collectable but only after extreme delay. A few instances were cited in which the government had refused to comply with orders for other types of judicial relief.

III. Financial Resources

Factor 10: Budgetary Input

The judiciary has a meaningful opportunity to influence the amount of money allocated to it by the legislative and/or executive branches, and, once funds are allocated to the judiciary, the judiciary has control over its own budget and how such funds are expended.

Conclusion	Correlation: Positive
The judiciary has a meaningful opportunity to influence the amount of money it is allocated and has control over its own budget and the expenditure of funds.	

Analysis/Background:

Judicial control over the administration of the judiciary's budget is constitutionally guaranteed. See CONSTITUTION art. 144. The Office for the Administration of the Judiciary Budget works with the individual courts to determine their financial needs, prepares the annual budget, and oversees the use of funds allocated by the Assembly and other sources. The office operates under the authority of the courts and is managed by a board composed of eight judges and one representative of the Ministry of Justice. See LAW FOR THE CREATION OF THE OFFICE FOR THE ADMINISTRATION OF THE JUDICIARY BUDGET arts. 1-6, Law No. 8363, 16 FLET. ZYRT. 537-40 1998. The Office presents the annual budget to the Ministry of Finance. See *Id.* at art. 9. While the Ministry of Finance and Council of Ministers have the ultimate say over the budgetary package presented to the Assembly, the judiciary can and does influence the process in the Ministry of Finance and in the Legal and Budgetary commissions of the Assembly.



Factor 11: Adequacy of Judicial Salaries

Judicial salaries are generally sufficient to attract and retain qualified judges, enabling them to support their families and live in a reasonably secure environment, without having to have recourse to other sources of income.

Conclusion	Correlation: Negative
While judicial salaries have increased over the past few years, and are on a par with or above other governmental salaries, they are not alone sufficient to retain and attract qualified judges or to enable judges to support their families in a reasonably secure environment. Judges often resort to illicit sources of income.	

Analysis/Background:

Although judicial salaries have increased several times over the past decade, respondents unanimously agreed that the compensation of judges of the first instance courts and courts of appeals remains insufficient. While many qualified candidates are attracted to the judiciary, the salaries alone are not sufficient to attract top candidates, who could earn much more in the private practice of law. All respondents acknowledged that many judges avail themselves of bribes and other illicit sources of income. Respondents also did not believe that the salaries are sufficient to provide a reasonably secure environment for judges and their families. While many or most families survive in Albania with lower incomes, judges have a particular need for a secure method of transportation and a secure living environment. The salary problem is particularly acute for judges assigned to posts away from their home city and for other judges who have to rent a residence. Many respondents suggested that the low salaries lie at the heart of the problem of judicial corruption (see discussion under Factor 21 below).

In the courts of appeals, chief judges receive monthly salaries of 74,489 lek (\$552), deputy chiefs 62,465 lek (\$463) and other judges 58,806 lek (\$436). In the courts of first instance, chief judges receive 51,951 lek (\$385), deputy chiefs earn 48,031 lek (\$356), while the other judges make 45,085 lek (\$334) per month. Judges of the Tirana District court make more than their counterparts on the other district courts, being paid the same as judges one step above them in the judicial hierarchy. See Council of Ministers Decision No. 425, "For Increasing the Salaries of Judges and Prosecutors," 37 FLET. ZYRT. 1180-82 (2001). Overall, salaries of judges on the courts of appeals and courts of first instance are thirty percent higher than in the year 2000. While judges are likely to receive a twelve percent salary increase in early 2002, this alone would not be sufficient to address the problem.

The majority of respondents felt that the compensation packages provided to judges of the High Court and Constitutional Court are adequate, particularly in light of the non-pecuniary benefits they receive, such as use of a state automobile and a driver who also provides some security. "The salary of a High Court judge is equal to that of a minister." LAW ON THE ORGANIZATION AND FUNCTIONING OF THE HIGH COURT OF THE REPUBLIC OF ALBANIA art. 22, Law No. 8588, 7 FLET. ZYRT. 274-80 (2000) [hereinafter LAW ON THE HIGH COURT]. The High Court Chairperson's salary is twenty percent higher than that of other judges on the court. *Id.* Constitutional Court judges receive twenty percent more than their counterparts on the High Court, and the Chairperson of the Constitutional Court receives twenty percent more than the other judges on the court. See LAW ON THE CONSTITUTIONAL COURT art. 17. The salaries and other benefits of sitting judges of all levels may not be lowered. See CONSTITUTION art. 138; and LAW ON THE CONSTITUTIONAL COURT art. 17.3. Thus, the Chairperson of the Constitutional Court currently receives 150,538 lek (\$1,115) monthly; Constitutional Court judges and the Chairperson of the High Court receive 125,448 lek (\$929); and judges of the High Court earn 104,540 lek (\$774). See Council of

Ministers Decision No. 424, “On the Salaries of Budgetary Institutions,” 37 FLET. ZYRT. 1168-80 (2001) (establishing the salary of a minister).

Factor 12: Judicial Buildings

Judicial buildings are conveniently located and easy to find, and they provide a respectable environment for the dispensation of justice with adequate infrastructure.

Conclusion	Correlation: Neutral
Judicial buildings are conveniently located and easy to find. While the majority of courts have recently been renovated, those that have yet to be restored provide a poor environment for the dispensation of justice.	

Analysis/Background:

Prior to 1997, almost all courts in Albania were old, dilapidated, and in general disrepair. Although they were conveniently located and easy to find, courtrooms were inadequate and trial court sessions often took place in judges’ small offices. See Scott Carlson, A Study of the Judicial System in the Republic of Albania, prepared for the World Bank 21 (1997) (noting basic inadequacy of court infrastructures with buildings and utility systems in “advanced state of disrepair”). Albania’s civil unrest of 1997 led to further destruction of the court infrastructure in many regions. *Id.* at 27-28 (observing that ten of thirty-six district courts were destroyed during period of civil unrest). Fortunately, a comprehensive, donor-led court renovation project is well underway, with many court buildings having now been improved. Separate initiatives have also led to the renovation of the High Court and Constitutional Court. Nevertheless, there remain several court buildings where work has yet to begin, or where additional work is still needed. For example, the District Court of Tirana remains too small for its huge caseload, and its security systems are inadequate. Two judges share a single office, and sometimes two judicial proceedings are carried out at the same time in these offices. (An annex to the Tirana Court building is planned). The District Court building in Kavaja is said to be dilapidated and badly in need of attention; and renovations are needed at the Vlora Court of Appeals.

Factor 13: Judicial Security

Sufficient resources are allocated to protect judges from threats such as harassment, assault, and assassination.

Conclusion	Correlation: Negative
Threats and intimidation of judges are common in some areas, but often go unreported. Current resources are insufficient to protect judges and their families. Security systems within the court buildings are often inadequate.	



Analysis/Background:

Respondents were unaware of any recent court-related assassinations or assaults on judges. While threats and intimidation are common in some areas, they are often not reported. In some instances, threats are accompanied by the offer of a bribe.

Under the law, judges have the right to special protection for themselves and their families when the situation so requires. See LAW ON THE ORGANIZATION OF JUSTICE art. 38.1. Thus, while judges might call for temporary police protection when threatened, they do not feel that the security provided is comprehensive enough to protect themselves and their families. One judge respondent said that police “did nothing” when he reported murder threats against himself and his family. Only after approaching central government authorities did the police take any action. Even then, the issuers of the threats—known by name to the judge—were never detained or processed criminally.

Security within the court buildings is also poor. A recent study highlights the need for a high-security courtroom in every court building. See Frederick M. Russillo, ABA/CEELI Judicial System Needs Assessment: The Republic of Albania 14 (2001) [hereinafter Russillo Assessment]. Most courts lack separate circulation systems for judges, lawyers, the public, and the accused. While metal detectors are being installed in court buildings that have been renovated, they are not yet found in every court building.

IV. Structural Safeguards

Factor 14: Guaranteed tenure

Senior level judges are appointed for fixed terms that provide a guaranteed tenure, which is protected until retirement age or the expiration of a defined term of substantial duration.

Conclusion	Correlation: Positive
Judges of the Constitutional Court and High Court are appointed for guaranteed nine-year terms. Judges of the lower courts are appointed for indefinite terms and continue in their function until they resign, are removed for cause, or reach retirement age.	

Analysis/Background:

Judges of the Constitutional Court and High Court are appointed by the President of the Republic with the consent of the Assembly. They are appointed for fixed nine-year terms and do not have the right to be re-appointed. CONSTITUTION arts. 125.1, 125.2, 136.1, 136.3. Judges of the courts of first instance and courts of appeal are appointed by the President of the Republic upon the proposal of the High Council of Justice. *Id.* at art. 136.4. They continue in their function until they resign, are removed for cause, or reach the age of sixty-five. See LAW ON THE ORGANIZATION OF JUSTICE arts. 25, 27.

Factor 15: Objective Judicial Advancement Criteria

Judges are advanced through the judicial system on the basis of objective criteria such as ability, integrity, and experience.

Conclusion	Correlation: Negative
There is a widespread belief that advancement of judges through the judicial system is often made on the basis of personal connections, rather than merit. The required system for the evaluation of judicial performance has yet to commence, leaving less objective data at the disposal of the High Council of Justice in making advancement decisions.	

Analysis/Background:

Appointments to the Constitutional Court and High Court are not necessarily part of the normal progression of advancement within the lower court system. The President of the Republic, with the consent of the Assembly, appoints the judges of the Constitutional Court and High Court. CONSTITUTION arts. 125.1, 136.1. Appointments to the Constitutional Court are made from among highly qualified legal professionals with at least fifteen years of work experience in the legal profession. See CONSTITUTION art. 125.2; and LAW ON THE CONSTITUTIONAL COURT art. 7.2. High Court judges are appointed from among highly qualified legal professionals with fifteen years of work experience, or from among judges with at least ten years of judicial experience. LAW ON THE HIGH COURT art. 3. While appointees to both courts need not be from among the ranks of the judiciary, they most often have prior judicial experience.

As with all lower court appointments, the appointment of judges to the courts of appeals, or as chairpersons or deputy chairpersons of the lower courts, is made by the President of the Republic upon the recommendation of the High Council of Justice. See CONSTITUTION art. 136.4; and LAW ON THE ORGANIZATION OF JUSTICE art. 24.2. According to law, judges of the courts of appeals are appointed on a competitive basis from among judges of the first instance courts who have five or more years of experience and “have demonstrated high ethical, moral and professional standards.” LAW ON THE ORGANIZATION OF JUSTICE art. 24.1. The criteria for appointment of chairpersons and deputy chairpersons are not specified. *Id.* at art. 24.2. The High Council of Justice decides on the transfer of judges. See CONSTITUTION art. 147.4. Many judges actively seek transfer to another judicial district as a form of advancement.

The inspectorate of the High Council of Justice is to perform a professional evaluation of judges at least every two years, and the data from these regular evaluations would be useful in making advancement decisions. The first such evaluation is likely to be completed in early 2002. Moreover, the new law on the High Council of Justice, elaborates a transparent procedure for the announcement of judicial vacancies and will provide for testing of applicants for open posts. NEW LAW ON THE HIGH COUNCIL OF JUSTICE arts. 28-29.

Many respondents said that advancement within the judicial system is often based on cronyism, rather than on merit. Many judge respondents felt that decisions to transfer judges to more desirable judicial districts are also based more on personal connections than on objective criteria. Moreover, judges appointed or advanced through the system are sometimes said to feel a moral obligation to provide preferential treatment in court matters to those who were behind their appointment. This type of cronyism is, in fact, well-entrenched in Albanian society. While it is not possible to determine the extent to which respondents’ concerns are reflective of the advancement process, the widespread distrust of this process suggests the need for additional measures to ensure its objectivity and transparency. The High Council of Justice, a body independent of the executive and legislative branches, and made up of a majority of judges, is in



place to guard against such practices. Initiation of the judicial review system, increasing the transparency of the meetings of the High Council, the addition of procedural safeguards, and the more detailed elaboration of the advancement criteria could increase the objectivity of the process as well as how it is perceived.

Factor 16: Judicial Immunity for Official Actions

Judges have immunity for actions taken in their official capacity.

Conclusion	Correlation: Positive
All judges enjoy limited immunity from criminal prosecution and from detention and arrest, as well as immunity from civil liability for their official actions.	

Analysis/Background:

Judges of the Constitutional Court can only be criminally prosecuted with the consent of the Constitutional Court. CONSTITUTION art. 126. High Court judges can only be prosecuted with the approval of the Assembly. *Id.* at art. 137.1. Similarly, High Council of Justice approval is required before a lower level judge may be prosecuted. *Id.* at art. 137.3. Judges of any level can only be detained or arrested if apprehended in the commission of a crime or immediately after its commission. *Id.* at arts. 126, 137.2, 137.4. In addition, judges may not be held accountable in a civil proceeding for matters related to the exercise of their profession, except when this is provided for by a specific law. LAW ON THE ORGANIZATION OF JUSTICE art. 37. See also, LAW ON THE CONSTITUTIONAL COURT art. 16 (Constitutional Court judges bear no “legal responsibility” for opinions and votes in cases under review). No such laws were found providing any form of civil liability of judges for their official acts and respondents were not aware of any recent violations of these principles of judicial immunity.

Factor 17: Removal and Discipline of Judges

Judges may be removed from office or otherwise punished only for specified official misconduct and through a transparent process, governed by objective criteria.

Conclusion	Correlation: Neutral
While the judicial discipline process has greatly improved, a lack of transparency in the High Council of Justice, as well as open-ended removal criteria, create the possibility for disciplinary removal without sufficient evidence of misconduct. Because the first professional evaluation of judges has yet to be completed, it is too early to assess the process for removal of judges on the grounds of professional insufficiency.	

Analysis/Background:

Judges of the Constitutional Court and High Court may be removed from office by a two-thirds vote of the Assembly on the basis of “violations of the Constitution, commission of a crime, mental or physical incapacity, or acts and behavior that seriously discredit the position and reputation of a judge.” CONSTITUTION arts. 128, 140. The Assembly’s decision is automatically

reviewed by the Constitutional Court before the judge is discharged. In addition, the Constitution lists five grounds on which the term of a judge of the Constitutional Court or High Court may be ended prematurely, including when the judge has been declared incompetent by a final judicial decision. As opposed to removal, the end of a judge's term is declared by the court on which the judge sits. *Id.* at arts. 127, 139.

Under prior legislation, the removal of several high-level judges was highly criticized in the media or by international organizations. In addition, lower-level judges were sometimes transferred or removed for a lack of loyalty to the executive branch. The 1995 removal of the Chairperson of the Court of Cassation has been recognized by some within the international community as a clear violation of judicial independence. The 1998 removal of the Chairperson of the Constitutional Court and a subsequent determination in 1999 regarding the end of the term of office of the Chairperson of the High Court, suggest a willingness by political decision makers to play close to the lines in cases involving the removal or termination of the country's top judiciary. While no recent problems have been observed in this regard, and changes to the legal framework help to protect against politically-based removals and transfers, future JRI assessments should continue to pay close attention to this issue.

In addition to the grounds applicable to higher level judges, there are numerous other grounds on which judges of the first instance courts or courts of appeal may be removed. They may be removed for "professional insufficiency," disciplinary violations, or for holding positions or participating in conduct otherwise prohibited in the Law on the Organization of Justice. Judges of the lower courts are removed and disciplined by the High Council of Justice. Those removed have the right to appeal to the High Court. CONSTITUTION art. 147.6.

With respect to "professional insufficiency" as a ground for removal, every two years the High Council of Justice is to perform an evaluation of the professional ability of judges. Judges receiving a grade of "incapable" are subject to dismissal. LAW ON THE ORGANIZATION OF JUSTICE art. 45. Because this evaluation process has yet to be implemented, it is too early to evaluate its transparency and objectivity.

The Law on the Organization of Justice elaborates eight disciplinary violations and provides for five sanctions ranging from simple "objection" to dismissal. See LAW ON ORGANIZATION OF JUSTICE arts. 41-42. The Minister of Justice commences disciplinary proceedings before the High Council of Justice. A decision dismissing a judge from office may be appealed to the High Court. In 2000, twelve judges were ordered removed by the High Council of Justice (two such decisions were later reversed by the High Court or Constitutional Court). As of mid-December 2001, the High Council had ordered six judges removed for disciplinary violations. Some respondents felt that the High Council had not taken enough action to discipline or remove judges for improper conduct. More resources are needed for the High Council's Judicial Inspectorate in order to expedite the Council's work and provide more substantial evidence of disciplinary violations for the Council to consider. There is also a serious concern that the High Council would base a removal decision solely on a judge's erroneous decision or decisions in cases under review. This could well run afoul of the principle that judicial discipline should be "for reasons other than her interpretation of the law in a particular case." Plank, *The Essential Elements of Judicial Independence and the Experience of Pre-Soviet Russia*, 5 WM. & MARY BILL RTS. J. 1, 14 (1996). Moreover, the sessions of the High Council are generally not announced in advance to the public and media, and often are not open. Nor are the written decisions of the High Council easily attainable. A lack of transparency in the work of the Council undermines its credibility and holds the potential for disciplinary decisions to be based on less than sufficient evidence.



Factor 18: Case Assignment

Judges are assigned to cases by an objective method, such as by lottery, or according to their specific areas of expertise, and they may be removed only for good cause, such as a conflict of interest or an unduly heavy workload.

Conclusion	Correlation: Neutral
Under the law, all cases are assigned by random lottery, within the applicable subject-matter division of the court. Additional transparency in the process is needed to help ensure against potential abuse. Judges may only be removed from cases for good cause.	

Analysis/Background:

In all courts, except the Constitutional Court (which hears cases *en banc*), cases are assigned to judges by lottery, organized by the chancellor of the court and monitored by the court chairperson. The lottery in lower level courts is to be done in the presence of the judges. See LAW ON THE ORGANIZATION OF JUSTICE art. 15; Ministry of Justice Order No. 1830, "On Approval of Regulation on Organization and Functioning of Judicial Administration" arts. 5, 8.4, 11.1, 17 FLET. ZYRT. 517-31 (2001). Courts are divided into subject-matter panels, including criminal, civil, and military. While respondents reported that assignment rules are implemented in the vast majority of cases, many believed that the process is manipulated in some high-value cases in some courts. While the role of the court chancellor in the process is designed to safeguard the process, there remains the possibility of abuse either by the chancellor or with his/her knowledge. Additional transparency in the process is therefore needed to guard against the improper assignment of cases.

Judges may only be removed from a case for certain well-defined reasons, including conflict of interest. See CODE OF CIVIL PROCEDURE art. 72. Litigants often file unwarranted requests for the removal of a judge as a method of delaying the proceedings.

Factor 19: Judicial Associations

An association exists, the sole aim of which is to protect and promote the interests of the judiciary, and this organization is active.

Conclusion	Correlation: Neutral
The National Judicial Conference (NJC) is a voluntary, professional association of judges dedicated to promoting the interests of the judiciary. It holds annual meetings, which include educational seminars, and elects judges to the High Council of Justice. While all respondents praised the development of the NJC as a positive step, it has yet to become an effective voice for judicial reform.	

Analysis/Background:

The NJC was founded in December 1999 as a voluntary, professional association of judges dedicated to goals such as "strengthening the rule of law" and "the efficient functioning of the judiciary." See Statute of the National Judicial Conference of Albania arts. 1-3 (2001). The NJC

has the specific constitutional mandate to elect nine judges to serve on the High Council of Justice. CONSTITUTION art. 147.1. A previous body, the National Judges Association, became inactive in 1995 largely out of fear of repression by the executive branch. The NJC fulfills many of the functions previously ascribed to the National Judges Association, and so far, enjoys freedom from executive branch interference. The NJC has held three annual national meetings, and has convened at least one extraordinary session to select judges to the High Council. The annual meetings have involved educational seminars and have been supported by ABA/CEELI. The NJC now has six subject-matter committees, but they remain largely inactive. While the NJC's initial steps are encouraging, some respondents felt that the NJC is not yet active enough, does not serve as a mouthpiece for the judiciary on important reform issues, and would be more effective if it were granted additional powers under the law, including the ability to regulate the conduct of judges through the code of judicial ethics. Ongoing assistance efforts are targeted toward increasing the level of activity and effectiveness of the NJC.

V. Accountability and Transparency

Factor 20: Judicial Decisions and Improper Influence

Judicial decisions are based solely on the facts and law without any undue influence from senior judges (e.g., court presidents), private interests, or other branches of government.

Conclusion	Correlation: Negative
Judicial corruption is rampant and seriously undermines public confidence in the courts. While attempts have likely been made by some legislative or executive branch officials to influence court decisions, for the most part these efforts are undertaken for private gain, rather than to advance governmental policies.	

Analysis/Background:

The problem of inappropriate private influence on judicial decisions is rampant and seriously undermines public confidence in the judicial system. Respondents said that it is common for litigants or their attorneys to pay judges to achieve a desired outcome in a case. One respondent indicated that a so-called "good" judge is one who never asks for bribes, but who might accept money or a gift if offered. A "bad" judge is one who approaches litigants to ask them for bribes or who is extravagant in the amount of money gained through corrupt practices. Because of the unchecked nature of judicial corruption, public confidence in the courts is extremely low.

While many judge respondents are quick to point to low salaries as the cause of judicial corruption, lack of sufficient enforcement efforts and social acquiescence in corrupt practices are more likely at the root of the problem. The High Council of Justice has been active in removing some judges for disciplinary violations, but a lack of resources and investigative power has hampered the collection of data needed to establish corrupt practices. The lack of an informal link between the High Council and the prosecutors' office when the High Council uncovers evidence of corruption suggests a lack of interest in effectuating the criminal prosecution of violators. Moreover, there is a lack of serious effort by prosecutors and police to apply modern investigative techniques to ferret out corrupt judges, lawyers, court staff, and litigants. Very few criminal proceedings have been initiated, despite universal knowledge of the magnitude of the problem and knowledge of the identities of some of the more flagrant practitioners of judicial corruption. Thus, despite some small but positive steps by the High Council of Justice to curb the



problem, judicial corruption remains one of the biggest obstacles to the democratic development of Albania.

Respondents also indicated that some judges feel a moral obligation to the individuals who were responsible for their appointment and might grant such individuals more favorable treatment in a case under review. Moreover, it is common for friends, colleagues and relatives to try to influence judges to rule in their favor. This type of social pressure is endemic in the society. *Ex parte* communications are common and not generally regarded by lawyers or judges as inappropriate. Moreover, senior governmental officials are said to try to exert their influence over judges for their own personal gain. Finally, some respondents complained that some judges are politically biased.

Senior judges may have undue influence in the decisions of other judges in some instances, but respondents saw this as much less prevalent than the problem of private influences. For the most part, judges understand their individual and independent role in judging the cases assigned to them. Thus, senior judges are less likely than in the past to be effective in exerting undue influence over more junior judges.

Political pressure on the judiciary is also less of a problem than private influence. Respondents differentiated between a direct governmental policy of interference in the judiciary that was in place before 1990 and to some extent up to 1997, and the attempt by individual government officials to influence a case for their own personal gain. Respondents indicated that governmental influence over cases is uncommon, particularly the former type of interference, citing to the many court cases in which the government is the losing party.

Factor 21: Code of Ethics

A judicial code of ethics exists to address major issues such as conflicts of interest, ex parte communications, and inappropriate political activity, and judges are required to receive training concerning this code both before taking office and during their tenure.

Conclusion	Correlation: Negative
Although a code of judicial ethics exists, sitting judges are not required to receive training on it and there has yet to be an effort to enforce its provisions.	

Analysis/Background:

The NJC adopted the Code of Judicial Ethics on December 5, 2000. The Code contains twenty-nine rules addressing major issues such as conflicts of interest, *ex parte* communications, and inappropriate political activity. See National Judicial Conference, Code of Judicial Ethics (2000).

The Code provides that all judges shall abide by its rules and that violators are accountable to the NJC's Executive Council. Violations are examined by the NJC's Disciplinary Commission and may result in reprimand. See *Id.* at arts. 26-28. To date, the NJC's Disciplinary Commission has not commenced any examination, and no judge has been reprimanded for a violation of the Code. Because the NJC is a voluntary membership association with no legal authority to sanction judges for misconduct, it lacks any real enforcement power. Nevertheless, if the NJC were to become active in enforcing the Code, its moral authority would help to deter unethical conduct. Moreover, any serious violations uncovered could be referred to the High Council of Justice for disciplinary action.

Thus far, only judges entering the judiciary through the Magistrates School have been required to pass a one-semester course on judicial ethics prior to taking the bench. Unfortunately, because of the lack of teaching staff, the ethics course may not be taught in 2002. There is no requirement that sitting judges, or judges appointed through methods other than through the Magistrates School, receive training in the Code. Moreover, judicial ethics is not one of the subjects listed in the Magistrates School's continuing judicial education plan for the coming year.

Factor 22: Judicial Conduct Complaint Process

A meaningful process exists under which other judges, lawyers, and the public may register complaints concerning judicial conduct.

Conclusion	Correlation: Neutral
The public can and does register complaints with the High Council of Justice regarding judicial misconduct. Nevertheless, the inspectorate lacks sufficient resources, and complaints often are not investigated or responded to.	

Analysis/Background:

Judges, lawyers, and the public may register complaints against judges with the High Council of Justice, which through its inspectorate conducts investigations. See LAW ON THE ORGANIZATION OF JUSTICE art. 17. Litigants and others often use this mechanism to register their complaints about the judiciary. Because the inspectorate lacks human resources and full investigative authority, it is not able to respond to, or fully investigate, all complaints it receives. Two attorney respondents indicated that complaints they had made to the High Council of Justice were not responded to in any fashion and did not appear to have resulted in any investigatory action. One respondent felt that lodging a complaint with the High Council of Justice was futile and not likely to lead to any result. Thus, while the mechanism exists and is in fact used by the public, more resources are needed to make the process more meaningful.

Factor 23: Public and Media Access to Proceedings

Courtroom proceedings are open to, and can accommodate, the public and the media.

Conclusion	Correlation: Negative
Subject to several overbroad and ill-defined exceptions in the law, court proceedings are to be open to the public and media. In practice, while many high-publicity cases are open, citizens could encounter great difficulty gaining access to smaller cases. Lack of courtroom space, and the absence of written public access procedures, hinders public access in some courts.	

Analysis/Background:

Under the law, court proceedings are generally open to the public. See, e.g., LAW ON THE CONSTITUTIONAL COURT art. 21; CRIMINAL PROCEDURE CODE arts. 339, 340, 437; and CIVIL PROCEDURE CODE arts. 26, 173. Cases may be closed for reasons including disclosure of a state secret, reasons of public order, "when the publicity may damage the social morality..." where



“circumstances from the intimate private life of the parties” and others will be mentioned where conduct (of the public) impairs the “normal performance” of the hearing, when necessary to protect witnesses or the defendant, or when necessary during the questioning of juveniles. See CRIMINAL PROCEDURE CODE art. 340; and CIVIL PROCEDURE CODE art. 173. The Civil Procedure Code provides that the court may exclude the media “when it estimates that such participation is not to the benefit of the case.” CIVIL PROCEDURE CODE art. 26.

In practice, high publicity cases are held in larger courtrooms in the presence of the public and the media. Lately, media have been permitted even to televise some court sessions, and they are generally able to gain access to cases they have interest in covering. For average cases, however, respondents felt it would be from “difficult” to “impossible” for the average citizen to gain access to the court building and observe a case in which he or she did not have a personal stake. The degree of openness varies from court to court. Many courts, but not all, post public notice of judicial proceedings. While the judges generally understand the open hearing requirement, court administrative and security personnel often do not. There appears to be no, or insufficient, written procedures for the admission of the public and media to most court buildings. With many judicial proceedings taking place in judges’ cramped offices, lack of space is also frequently an impediment to the public dispensation of justice.

Factor 24: Publication of Judicial Decisions

Judicial decisions are generally a matter of public record, and significant appellate opinions are published and open to academic and public scrutiny.

Conclusion	Correlation: Negative
Only opinions of the Constitutional Court and High Court are published. It is extremely difficult for an individual who is not a party in a case to obtain other decisions from the courts.	

Analysis/Background:

The Constitution provides that “[i]n every case, judicial decisions are announced publicly.” CONSTITUTION art. 146.2. “The High Court must publish its decisions as well as the minority opinions.” CONSTITUTION art. 142.2. Decisions of the Constitutional Court, including its minority opinions, are published in the Official Gazette, but at least some of the dissenting opinions appear to have been omitted from the Constitutional Court’s own separate publication of its cases. See CONSTITUTION art. 132.2 (Constitutional Court decisions including minority opinions must be published in the Official Gazette).

One judge respondent complained of delay in publication of the Official Gazette, pointing out an August decision of the Constitutional Court that did not appear until the first week of December. Current editions of the Official Gazette are available to the public through the state’s Official Publications Center, but older editions are out of print and difficult to obtain. Decisions of the courts of appeals and courts of first instance are not published at all.

As a remnant of the former communist-era system, many court personnel still consider court filings and court decisions to be of a secret nature. In general, one cannot obtain a simple court decision without express permission of the court president. Not all judges understand the legal requirement of, or the importance of, providing public access to court filings and decisions. One prosecutor respondent expressed the belief that only the parties to the dispute and other individuals with a direct stake in a case may obtain copies of the court’s decisions. Many

respondents said that the way to get copies of court orders is from the parties' lawyers, not from the court. There appear to be no effective internal procedures for easy public access to court decisions, and the lack of copy machines would make it difficult for the court to reproduce large numbers of decisions for public consumption, even if there were the inclination to do so.

Lawyers from prominent international organizations reported that they have difficulty obtaining court decisions and have been turned away on several occasions. One Albanian business lawyer recounted that he was unable to obtain decisions from the court relating to companies with which his business had dealings. It was said to be "difficult" or even "impossible" to obtain business registration decisions and the accompanying businesses' bylaws and articles of incorporation from the courts. Average citizens with less sophistication would be even less successful in obtaining access to unreported court decisions.

Moreover, despite the requirement that court decisions be reasoned, see CONSTITUTION art. 142.1, a common observation is that many judicial decisions lack sufficient reasoning or are poorly written. One judge respondent said that the lower court decisions usually are "not reasoned."

Factor 25: Maintenance of Trial Records

A transcript or some other reliable record of courtroom proceedings is maintained and is available to the public.

Conclusion	Correlation: Negative
A verbatim transcript of court proceedings is not maintained, and records taken are often inaccurate, incomplete, and difficult to read. Moreover, the records are not readily available to the public.	

Analysis/Background:

Respondents overwhelmingly cited the lack of a complete and accurate court record as one of the biggest problems facing the administration of justice. A verbatim transcript of proceedings is not kept. Instead, court secretaries take notes in longhand summarizing the major developments, including the final decision in the case. One respondent said that a system of short-hand exists for the Albanian language, but is not used in the courts. Often, despite their seeming dedication, the secretaries are poorly trained and underpaid. While they operate under the supervision of the presiding judge, their lack of legal background leaves them less than fully equipped to make decisions as to what should be included in the record. Lawyers and judges alike complain that the resulting record is often inaccurate, incomplete, and that parts are illegible. Important admissions of parties in open court are missed or are not accurately reflected. Sometimes the court's final decision is not typed from the secretary's notes until after the time for appeal has lapsed. Thus, the current system leaves open the opportunity for corrupt individuals to pay to influence what is included in the transcript, or for court staff to extort payment from parties in order to assure the timely preparation of the decision.

Moreover, while judges were not aware of requests by non-parties to review the records of proceedings, such records would not be readily available to the public. Access, if granted at all, would likely require approval by the court president.



VI. Efficiency

Factor 26: Court Support Staff

Each judge has the basic human resource support necessary to do his or her job, e.g., adequate support staff to handle documentation and legal research.

Conclusion	Correlation: Negative
Judges of the Constitutional Court and High Court generally have adequate numbers of support staff or have sufficient resources to hire the additional staff needed. The lack of legal advisors and administrative staff at other court levels seriously hampers the dispensation of justice and forces judges to spend an inordinate amount of their time performing administrative functions.	

Analysis/Background:

The Constitutional Court currently lacks sufficient support staff, but it has resources to hire the additional personnel needed. The Court hopes quickly to fill current vacancies and eventually to hire one legal advisor for each judge, along with other administrative personnel.

Judges of the High Court currently have one legal advisor each and could be allotted up to two under current provisions. Judges indicated that the court is well-supported by administrative staff, but the staff would benefit from training.

Courts of first instance and courts of appeal judges suffer a serious lack of human resource support. Judges have no legal advisors to perform research or assist in other legal tasks. They are generally allotted only one secretary each, who keeps the written record of court proceedings. Consequently, judges spend an inordinate amount of their time dealing with secretarial and administrative matters, and many judges are overwhelmed by their caseload.

Court administrative personnel are very poorly paid and are susceptible to corruption. They receive no training prior to commencing their duties, and their on-the-job training is limited. Judicial staff of all levels would benefit from legal, administrative, and computer training.

Factor 27: Judicial Positions

A system exists so that new judicial positions are created as needed.

Conclusion	Correlation: Neutral
A mechanism exists to create new judicial positions as needed, but it does not appear that existing judgeships are distributed optimally throughout the country.	

Analysis/Background:

The number of judges in each judicial structure is determined by a decree of the President of the Republic, upon proposal by the Minister of Justice and after consultation in the High Council of Justice. See LAW ON THE ORGANIZATION OF JUSTICE art. 12. While respondents disagreed as to

whether Albania currently has too many or too few judges, they believed that the current structure is sufficient to create additional judicial positions as needed.

Even so, judges on some courts are overworked compared with their colleagues in other districts, and additional steps need to be taken to even out the judicial workload. Judges on the Tirana Court of First Instance, for example, are notoriously overworked. Other courts appear to be relatively overstaffed. Because sitting judges have guaranteed tenure and should not be transferred without their consent, any reshuffling of posts should be done with respect to vacant posts only, or where a judge first consents to transfer. See CONSTITUTION art. 138 (“[t]he time a judge stays on duty cannot be limited”); CONSTITUTION art. 147.5 (judges may not be transferred without their consent, “except when the needs of reorganization of the judicial system dictate this”); and International Bar Association Code of Minimum Standards of Judicial Independence No. 12 (“[t]he power to transfer a judges from one court to another shall be vested in a judicial authority and preferably shall be subject to the judge’s consent, such consent not to be unreasonably withheld.”). Thus, while a system exists to create new posts, it does not appear that the system functions well to assess courts’ relative workloads and to shift, or eliminate, existing judicial positions as needed.

Factor 28: Case Filing and Tracking Systems

The judicial system maintains a case filing and tracking system that ensures cases are heard in a reasonably efficient manner.

Conclusion	Correlation: Neutral
Albania’s manual case filing and tracking systems are sufficient to ensure the reasonably efficient handling of cases. Tracking cases by plaintiff or defendant is difficult, and no subject matter index is maintained.	

Analysis/Background:

Respondents considered the manual case filing and tracking systems to be functional and adequate to handle current caseloads. Cases may be found by date of filing and index number, but it is more difficult to search cases by the plaintiff’s or defendant’s name. There is no system indexing cases by subject matter and no comprehensive national index of cases. Moreover, there is no system for litigants to telephone administrative court staff to inquire about the scheduling of court proceedings.

A recent study characterizes the present register book indexing system as “strong but limited.” Russillo Assessment at 15. The courts’ manual case-intake and file storage systems are likewise reasonably effective. There is, however, difficulty in sharing information among different courts and law enforcement agencies; and there is often great delay in the transmittal of the record when an appeal is taken. The aforementioned study concludes that the present system is indeed functional, but recommends manual improvements and eventually automated systems to deal with more the complex commercial cases and increased caseloads likely in the future. *Id.*



Factor 29: Computers and Office Equipment

The judicial system operates with a sufficient number of computers and other equipment to enable it to handle its caseload in a reasonably efficient manner.

Conclusion	Correlation: Negative
Additional computers, copiers, and other equipment are needed in some courts. Existing computers need to be linked through local area networks. In addition, resources need to be committed to ensure the prompt repair of equipment, and court personnel need training in computer applications.	

Analysis/Background:

Most, if not all, courts now have some computers and other equipment, thanks to donor initiatives and state funds. Nevertheless, additional equipment is sorely needed in some courts, including computers, photocopy machines, and other basic equipment. A recent survey concludes that simple recording devices should replace the current system of recording court proceedings by hand. See Russillo Assessment at 16-17.

More importantly, steps need to be taken to ensure that court equipment is used in a maximally efficient way. For the most part, courts' computers are used only for word processing and courts do not have local area networks. Equipment often breaks down and is not promptly repaired. Some judges and court staff are not trained in basic word processing and typing. Thus, while there certainly is a need for additional computers and other equipment, respondents placed more emphasis on the need to train judges and staff on computer applications and the need to develop more effective systems for the repair of existing equipment. Respondents also emphasized the need to install local area networks to facilitate the sharing of data within a court, and the eventual need for the development of an automated national system for the sharing of information.

Factor 30: Distribution and Indexing of Current Law

A system exists whereby all judges receive current domestic laws and jurisprudence in a timely manner, and there is a nationally recognized system for identifying and organizing changes in the law.

Conclusion	Correlation: Neutral
Judges generally receive copies of laws and published court decisions within a few weeks of their promulgation. Decisions of the courts of appeal are not published, and some ministerial orders do not make their way to judges or into the official gazette. A recognized system for identifying changes to the laws is in place, but there is no system to integrate changes into a single text.	

Analysis/Background:

All judges are entitled by law to a free copy of the Official Gazette. LAW ON THE ORGANIZATION OF JUSTICE art. 38.2. The gazette—published monthly by the state Official Publications Center—contains laws, decisions of the Council of Ministers, Constitutional Court decisions, High Court decisions, and other state publications. The gazette is delivered by mail to judges throughout the country. While the publication is often delayed by a few weeks – and delivery to some regions is

even further delayed – judges tend to receive current laws and jurisprudence within a few weeks of their promulgation.

New judges who join the bench do not receive copies of the laws then in force; and the comprehensive compilation of the country's laws is out of print. While new judges may borrow copies from their senior colleagues, respondents highlighted the need for a chronological republication of all laws.

Many regulations, court procedures, ministerial orders, and internal rules of procedure of ministries and other bodies are not published in the Official Gazette. There is often not a procedure in place for the regular transmittal of such documents to the Official Publications Center for publication. As a result, there are many documents of significance that do not make their way to the judges or into the public record. Although lacking precedential effect, significant decisions of the courts of appeal are neither published nor provided to judges.

An index to the laws has been maintained since the change to democracy. It is useful in identifying laws by subject matter and in tracking changes to legislation. Unfortunately, changes to laws are not incorporated into a single unified text, and dealing with a law that has been amended several times can be extremely cumbersome. Respondents highlighted the need for a subject-matter compilation of the laws, with integrated amendments, in various areas such as tax, commercial companies, elections, banking and finance, property, and the like.



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